

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KRISTY FISCHER
Claimant

KIDS CORNER
Employer

APPEAL 20A-UI-08901-J1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 5/17/20
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

On July 25, 2020, the claimant filed an appeal from the July 16, 2020, (reference 01) unemployment insurance decision that denied benefits based on voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on September 8, 2020. Claimant participated. Employer participated through Lezlie Ellerman, Owner/Director.

ISSUE:

Did claimant quit with good cause attributable to the employer?
Was claimant terminated for misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on September 17, 2020. Claimant last worked as a full-time curriculum coordinator and teacher. Claimant worked with pre-school children until March. Claimant was separated from employment on March 3, 2020. The claimant asserts that on March 3, 2020, Ms. Ellerman, discharged claimant when claimant was told by Ms. Ellerman that "Today needs to be your last day." Ms. Ellerman did not remember saying this to claimant. Claimant believed she was terminated at that point in time. Claimant and Ms. Ellerman were having a conference that Ms. Ellerman was having with claimant to bring to claimant's attention a number of work performance/attendance issue. Claimant was concerned about the potential reduction of her hours in a proposed schedule. Ms. Ellerman said that claimant was insisting on having things her way and was not receptive to correction or instruction. Claimant had received a written warning in December 2019 about similar concerns. Claimant left work on March 3, 2020 and told the children she was leaving and not coming back. Claimant admitted to stating on her Facebook that she had quit. Claimant explained that she was hurt and embarrassed when she posted the quit on Facebook.

REASONING AND CONCLUSIONS OF LAW:

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left his employment. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992).

I find that both claimant and Ms. Ellerman were generally credible. I find that it is entirely believable that Ms. Ellerman was extremely frustrated by the claimant's attitude, that Ms. Ellerman reasonably thought that the conference on March 3, 2020 was going nowhere. That Ms. Ellerman was irritated by claimant's defensiveness and stubbornness. I find it is more likely than not that during the meeting on March 3, 2020 Ms. Ellerman told claimant that it was her last day. I find that claimant did not voluntarily quit her employment.

The next issue is whether claimant committed job related misconduct?

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence is not misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

The employer was very frustrated by claimant's attitude. The claimant insisted on meeting with the employer to discuss her hours of work and was not open to accept criticism. Claimant's attitude may be grounds for discharge, but does not amount to the level of conduct that disqualifies claimant from receiving unemployment insurance benefits. I find the employer has failed to prove a current act of misconduct that would disqualify claimant.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The July 16, 2020, (reference 01) unemployment insurance decision is reversed. Benefits are payable, provided claimant is otherwise eligible.



James F. Elliott
Administrative Law Judge

October 16, 2020
Decision Dated and Mailed

je/sam